



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 3604-23
Ref: Signature Date

█
█

Dear █:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 25 May 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations, and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the 6 April 2020 Administrative Remarks (page 11) entry, associated rebuttal statement, and all adverse material. You also request to remove your fitness report for the reporting period 4 July 2019 to 31 May 2020. The Board considered your contention that the presence of the counseling entry and fitness report in your record is arbitrary and capricious, and unsupported by substantial evidence. You also contend that a conclusion or single piece of evidence is insufficient when countervailing evidence is ignored, when the conflict remains unresolved, and when countervailing evidence was not considered at the time of the counseling entry. Therefore, it would be an injustice for the adverse material to remain in your record after exoneration by the Board of Inquiry (BOI). You claim that countervailing evidence was considered at your BOI, and the BOI members found no factual basis for the alleged misconduct. You also claim that your case is analogous to similar cases where adverse material

was removed after exoneration by a command investigation or when allegations were ultimately unsubstantiated and the individual was cleared of all legal implications.

The Board noted that pursuant to the Marine Corps Individual Records Administration Manual (IRAM), you were issued a page 11 entry counseling you for an incident involving you and your wife physical assaulting each other and your plea of no contest to assault and battery on a family member in civil court. The Board also noted that you acknowledged the entry and in your statement, you expressed regret and explained the events leading to the assault. The Board determined that the contested counseling entry was written and issued according to the IRAM. Specifically, the entry provided written notification concerning your deficiencies and it afforded you the opportunity to submit a rebuttal. Moreover, the Commanding General (CG) signed the entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do.

The Board noted that your BOI unanimously found that a preponderance of the evidence did not prove the allegations. The Board also noted that according to 10 U.S.C. Section 1182, BOI's are convened to receive evidence and make findings and recommendations as to whether an officer on active duty should be retained on active duty. The Board determined that BOI's do not determine if an officer is "guilty" or "not guilty" of misconduct, but rather, that the misconduct did or did not warrant separation. Moreover, BOI findings are not binding on a Commander, who had independent authority to determine whether an officer committed misconduct. The fact that the BOI came to a different conclusion is not a material error or injustice. The Board substantially concurred with the CG's determination. In this regard, after a review of the BOI findings and all relevant materials, the CG determined that your conduct was unacceptable for any Marine officer, specifically, the placement of your forearm on your wife's throat with sufficient force to leave a bruise. While it appears your wife is also at fault for striking you, she is not a Marine officer, nor is she subject to his authority. According to the Marine Corps Legal Support and Administration Manual, your plea of no contest in civil court required the submission of a Report of Civilian Conviction. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the page 11 entry, associated rebuttal, and other derogatory material from your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Concerning your request to remove your fitness report for the reporting period 4 July 2019 to 31 May 2020, the Board determined that you have not exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation Appeals Manual.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a

correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/12/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]